

APPEAL NO. 030471
FILED APRIL 4, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 30, 2003. The hearing officer resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 11th quarter, which began July 31 and ended October 29, 2002. The appellant (carrier) appealed, arguing that the determination of the hearing officer was not supported by the great weight of the evidence. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative requirements for SIBs. The parties stipulated that the qualifying period for the 11th quarter started April 18 and ended July 17, 2002. At issue in this case is whether the claimant met the good faith job search requirements of Section 408.142(a)(4) by meeting the requirements of Rule 130.102(d)(2), and the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1).

The carrier asserts that the claimant's unemployment during the qualifying period was not a direct result of her impairment. We have noted that a finding that the claimant's unemployment or underemployment is a direct result of the impairment is sufficiently supported by evidence if the injured employee sustained a serious injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 960028, decided February 15, 1996. In this instance, there is evidence from which the hearing officer could determine that the claimant's injury resulted in permanent impairment and that, as a result thereof, the claimant could no longer reasonably work as a home health care aide. The Appeals Panel has also held that a claimant's unemployment or underemployment must be a direct result of the impairment from the compensable injury, but the impairment from the compensable injury need not be the sole cause of the unemployment or underemployment. Texas Workers' Compensation Commission Appeal No. 960721, decided May 24, 1996.

Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) during the qualifying period. The claimant testified that she attended classes paid for by the TRC, which provided training as a general office clerk and the enrollment application for

the course reflects the TRC as the payor. A certificate of completion dated June 14, 2002, and an end of the month progress report which showed the various attendance by the claimant throughout the month of April 2002 and her grades were in evidence reflecting satisfactory performance. The carrier argues mere testimony without sufficient documentary evidence is insufficient to establish satisfactory participation in a TRC program. However, in Texas Workers' Compensation Commission Appeal No. 010952-s, decided June 20, 2001, the case referenced by the carrier, the majority affirmed a hearing officer's determination of entitlement to SIBs under Rule 130.102(d)(2) for full-time participation in a vocational rehabilitation program sponsored by the TRC. In Appeal No. 010952-s, the evidence of the TRC sponsorship came from the claimant's testimony and the majority determined that this testimony provided minimally sufficient support for the determination that the claimant satisfied the good faith requirement under Rule 130.102(d)(2). While Appeal No. 010952-s cautioned against overreading the decision, the significance thereof in this instance, is that it determined that documentary evidence of TRC sponsorship was not absolutely required and it necessarily follows from that determination that, contrary to the carrier's assertions here, the claimant is not required to introduce the vocational rehabilitation program in evidence in order to establish SIBs entitlement.

Further, the carrier argues that the claimant failed to meet the good faith requirement because she could not show that she either attended school or looked for a job every week of the qualifying period. As stated in Texas Workers' Compensation Commission Appeal No. 001536, decided August 9, 2000, attendance in a TRC-sponsored program as described in the rule is not required in every week of the qualifying period, but only "during" that period. We are satisfied that the evidence sufficiently supports the hearing officer's finding that the claimant was enrolled in and satisfactorily participated in a full-time vocational rehabilitation program sponsored by the TRC. Having affirmed the determination that the claimant met the definition of good faith under Rule 130.102(d)(2), the claimant was not required to additionally satisfy the requirement of Rule 130.102(e) to document a job search effort in each week of the qualifying period. Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000. Both Appeals Panel decisions cited by the carrier for the proposition that attendance in school does not remove the claimant's responsibility to make a good faith attempt to find employment, were cases decided prior to the enactment of Rule 130.102.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Terri Kay Oliver
Appeals Judge

Robert W. Potts
Appeals Judge